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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: October 17, 2012*

+ **FAO(OS) 505/2012**

PRAKASH JHA PRODUCTIONS Appellant
Represented by : Mr.Sandeep Sethi,
Sr.Advocate instructed by Mr.Ameet B. Naik,
Ms. Aparajita Singh, Mr. Harshvardhan Jha,
Mr. Ravi Suryavanshi, Ms. Priti Gupta,
Advocates.

versus

BATA INDIA LIMITED & ORS. Respondents
Represented by: Mr.Neeraj K. Kaul Sr.
Advocate instructed by Mr. P.R. Sikka, Mr.
Amnet Sikka, Mr. Sumar Kachwaha, Mr.
Raghvendra M. Bajan, Advocates for R-1.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MANMOHAN SINGH

PRADEEP NANDRAJOG, J. (Oral)

Caveat No.1079/2012

Since counsels as above appear for the respondents caveator, the caveat stands discharged.

CM No.18116/2012

Allowed, subject to just exceptions.
FAO(OS) 505/2012

CM No.18115/2012

Allowed. As and when certified copy of the impugned order is available the same be filed.

FAO(OS) 505/2012

1. Admit. Counsel as above accepts notice of admission for respondent No.1.
2. List for hearing on November 07, 2012.

CM No.18117/2012

1. The instant appeal challenges order dated October 15, 2012 disposing of IA No.18245/2012 filed by the respondent No.1 who was the plaintiff.
2. With respect to the cinematographic film titled 'Chakravyuh'; and relatable to a song sung in the movie being 'Mehengai', the learned Single Judge has restrained the appellant from releasing the cinematographic film in question which includes the song, if the name of the first respondent would remain in the song.
3. The issue raised in the appeal is of great public importance in the context of fundamental rights of the citizens to freely express themselves on social issues and thus we would be inclined to hear detailed submissions in the appeal but are constrained to pen this short order inasmuch as the cinematographic film in question is scheduled to be released in India on October 24, 2012. Only two more working days remain as per the calendar of this Court before the Autumn recess commences. The appellant seeks a stay of the operation of the impugned order.
4. We are informed that as far as the international premier is concerned, the movie in question has already been launched with a

premier show held in London on October 11, 2012 and that the offending lyrics in the song have been on the 'You Tube' by way of promotionals since mid September 2012.

5. Since the appeal came up for hearing today in the forenoon and we do not have the requisite time to view the cinematographic film we take on record the statement made by the learned senior counsel appearing for the appellant as well as for the first respondent that the theme of the cinematographic film is the burning social issue of disparity in the distribution of wealth created in the nation : Fight of values and thoughts between the 'haves' and 'have nots'. We are informed that the textual setting of the cinematographic film reflects a class struggle between the State, which is perceived by a section of the society to be capitalist oriented, vis-à-vis those who believe that the social philosophy of the State should be of a kind which facilitates a fair distribution of the wealth created i.e. meets the need of all and the greed of none. It is this esoteric thematic setting which finds an exoteric expression in the movie which shows to the viewer the struggle between the Maoists and the State.

6. The song is sung in the backdrop of the protagonist/maoist walking the dusty path in an impoverished village. The lyrics of the relevant part of the song in question would read as under:-

“Bhaiya dekh liya hai bahut teri sardari re
Ab to humri baari re naa.....

Mehangai ki mahamaari ne humara bhatta bitha diya
Chale hataane gareebi, gareebon ko hata diya
Sarbat ki tarah desh ko
Sarbat ki tarah desh ko gatka hai gatagat
Aam aadmi ki jeb ho gayi hai safachat

Bhaiya dekh liya hai bahut teri sardari re

Ab to humri baari re naa.....
Bhaiya dekh liya hai bahut teri sardari re
Ab to humri baari re naa.....

Birla ho ya Tata, Ambani ho ya Bata
Sabne apne chakkar mein des ko hai kata
Birla ho ya Tata, Ambani ho ya Bata
Sabne apne chakkar mein des ko hai kata

Are humre hi khoon se inka
Engine chale dhakadhak
Aam aadmi ki jeb ho gayi hai safachat
Aam aadmi ki jeb ho gayi hai safachat

Ab to nahi chalegi teri ye rangdari re
Ab to humri baari re
Ab to nahi chalegi teri ye rangdari re
Ab to humri baari re naa....

Arey re
Ab to nahi chalegi teri ye rangdari re
Ab to humri baari re naa.....”

7. Loosely translated, the lyrics would mean as under:-

“Whether Birla or Tata, Ambani or Bata....
In their own interests, all have exploited the
country.....
Whether Birla or Tata, Ambani or Bata
In their own interests, all have exploited the country

It is our blood by which their....
It is our blood by which their....
Engine is fuelled/running
The common man’s pocket is completely emptied out
The common man’s pocket is completely emptied out

Now your goonism will do no longer
Now it is our turn.....
Now your goonism will do no longer

Now it is our turn.....
Beat the dholki brother beat the dukduki.....
Beat the dholki brother beat the dukduki.....

In their course, legal forums, police stations
File unlimited false cases.....
Their discriminatory law
Goes on killing spree from villages to villages.....
In their course, legal forums, police stations
File unlimited false cases.....
Their discriminatory law
Goes on killing spree from villages to villages.....

They take bribes like halwa.....
They take bribes like halwa.....
And gobble it
The common man's pocket is completely emptied out
The common man's pocket is completely emptied out

Now we have had enough of your policing
Now it is our turn.....
Now we have had enough of your policing
Now it is our turn.....”

8. The offence taken by the first respondent ‘Bata India Ltd.’, a well known brand name in India for footwear, is to the use of its name ‘Bata’ which admittedly is its trademark/trade-name. Objection taken is that use of the trade-name of the first respondent i.e. ‘Bata’ in the contextual context of the stanza in the song would ex-facie, without any further prompting, lead the listener of the song or the viewer of the movie to form an impression that the house of Bata, along with the business houses of Ambani group, Tata group and Birla group are evil; sucking the blood of the nation and operate on the blood of the nation.

9. The learned Single Judge has agreed with the view propounded by the first respondent and this explains the defendant in the suit being the
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appellant before us.

10. We would be dealing in detail, after hearing learned counsel for the parties, with the law on the subject and the decisions relied upon by the learned Single Judge, but would highlight that Mr. Neeraj K. Kaul, learned senior counsel appearing for respondent No.1 urged that the decisions mostly deal with situations where objective facts could be ascertained and kept in the backdrop. For example, with reference to the decision of a learned Single Judge of this Court reported as 178 (2011) DLT 705 Tata Sons Ltd. v. Greenpeace International & Anr., learned senior counsel brought out that the offending on-line game was a parody with respect to the objective fact of the house of Tata executing certain works which were perceived by the environmentalists as causing irreparable and irrefutable environmental damage. Learned senior counsel was at pains to highlight that with respect to songs or cinematographic film, where an objective analysis of the words and expressions used is capable of being debated upon, the issue pertaining to defamation would have to charter a route in the context of freedom of speech and expression vis-à-vis the right of privacy; counsel would concede that where a person asserting a matter of fact is sought to be restrained from expressing himself, law would not so permit, inasmuch as if the person concerned fails to objectively make good the fact asserted damages can always be quantified and directed to be paid. But, with respect to opinions and subjective issues which cannot demonstrably be shown to reveal the facts on which the opinions are based, learned counsel would urge that a different yardstick needs to be applied i.e. if the offending work is per-se defamatory, injunction must follow even if the defamatory material is in public domain for the reason its continued existence in the public domain

would be akin to a recurring cause of action.

11. The contention urged is that the stanza in question per se defames the house of Bata by portraying as if the house of Bata is akin to a blood sucking bat which survives on the blood of other living species; in the thematic setting of the film it will be the blood of the poor and the impoverished urges the counsel. Learned senior counsel would also seek to urge that with reference to the word '*kata*' the innuendo is that the house of Bata consists of dacoits and gangsters looting the country, which learned counsel urges would be per se defamatory. Learned senior counsel would further urge that the song in question and in particular the stanza attributes to the house of Bata all the ills which plague the nation and shows the house of Bata as the cause for the suffering of the impoverished people.

12. The rival viewpoint projected is that the song is no more than a rhetoric hyperbole and any person viewing the cinematographic film or hearing the song would understand, in its contextual setting, that it reflects the story of the struggle between the 'have nots' and the 'haves'.

13. Mr.Sandeep Sethi, learned senior counsel appearing for the appellant urges that notwithstanding four business houses being named in the song, the understanding of the song would not be with reference to a particular house but to a class which propagates the ideology of industrialization. And, brings out a call to those who propagate the ideology of socialism to unite and fight.

14. Issues with respect to such kinds of songs being sung in common parlance by trade unions or at Janhit shows were debated before us, albeit briefly. Issues pertaining to the film having a certification under the Cinematographic Act 1952, were also debated. But we need to have a

larger debate on the subject for which we shall grant time at the final hearing of the appeal.

15. However, for the moment, since we are inclined to stay the operation of the impugned order we would only like to pen down that the perception of the social phenomenon, though the most basic as well as most critical exercise in the social sciences, is nevertheless fraught with certain inherent limitations and difficulties. Objectivity of cognition and interpretation is anyhow distorted, and occasionally impaired, by the unavoidable intrusion of the subjective factors in all social analysis – unavoidable, because the ‘*object*’ is also the ‘*subject*’ and sometimes the ‘*perceiver*’ becomes the ‘*perceived*’.

16. But beyond this primordial and inherent limitation (clouding objectivity) there is a range of other volitional factors that tend to condition the human mind and its perceptive capabilities. At one level these include adherence to a faith or dogma, loyalty to ideological premises, attachment to a faith or dogma, attachment to a school of thought, and acceptance of certain value-orientations as a framework of thought and articulation; and at the other, the process of socialization based on birth, domicile, kinship, caste, class, profession etc. It is in this sense that it is rightly stated that ‘*we are all partisans, consciously or unconsciously*’.

17. The real demand of objectivity in social analysis, is therefore not to extricate oneself, even in a contrived effort, from the social phenomenon and the mainstream of life, as it were, but to be critically aware of the subjective predilections and value premises in order to continuously examine them, check them, re-evaluate them, in order to ‘*minimize*’ their impact on the cognitive process – ‘*minimize*’ because total elimination is

an impossibility.

18. In this context it may be remembered that objectivity of perception and analysis demands a clear statement of the value premises, of the normative framework and of the ideological paradigm, in order to help others in obtaining a better and more truthful view of an author's angle of perception, tools of analysis, and moulds of thinking.

19. The movie raises a burning social issue which we find is a matter of public debate on the streets and the press. The struggle between the 'haves' and the 'have nots'. The struggle for political power and the control over the philosophy of the State.

20. Would the traditional legal principles evolved by Courts on the subject of rhetorical language or hyperbole be sufficient guidance for Judges to resolve issues when expressions are used with respect to social issues? Is a question which needs to be seriously considered and answered. This is the reason why we are deferring hearing but penning our thoughts as aforesaid to bring out the richness in the public debate and especially in the modern societies where contemporary entities compete in the interdependent industrialized world and perhaps in this competition the individual organized industry of the common man renders him incapable of fighting an organized industrial establishment. To wit : When a prosperous person goes into depression and commits or attempts to commit suicide, what else is the phenomenon other than the individual organized industry falling apart against the onslaught of modernization.

21. Seen with the viewpoint as herein above, we do not prima facie find that in its contextual setting, viewed and heard as a whole, the song is derogatory or defamatory of the House of Bata. Four leading and well-

known industrial houses have been named and the statement naming them is prima-facie not likely to be taken literally by the viewer/listener.

22. Deferring further hearing of the appeal till November 07, 2012, the operation of the impugned order is directed to be stayed.

23. DASTI under signatures of the Court Master.

(PRADEEP NANDRAJOG)
JUDGE

(MANMOHAN SINGH)
JUDGE

OCTOBER 17, 2012
dk/skb